

CALIFORNIA JURISPRUDENCE

A COMPLETE STATEMENT
OF THE LAW AND PRACTICE
OF THE STATE OF
CALIFORNIA

Editor

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PHYSICIANS AND SURGEONS

- I. GENERALLY.
 - II. LICENSING REGULATIONS.
 - III. RIGHTS AND DUTIES WITH RESPECT TO PATIENTS.
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I. Generally.

1. Scope of Article.
2. Definitions and Distinctions.
3. Statutes Relating to Medicine, Surgery, Dentistry, Optometry, etc.
4. Validity of Statutes in General.
5. Criminal Responsibility.

II. Licensing Regulations.

GENERALLY.

6. Nature, Scope and Operation.
7. Authority Conferred by Licenses.
8. Validity of Regulations in General.
9. Requirements as to Knowledge and Experience as Ground for Attack.

SUSPENSION AND REVOCATION OF LICENSES.

10. Statutory Provisions Generally.
11. Causes of Revocation or Suspension.
12. Sufficiency of Definition of Cause in Statute.
13. Proceedings Before State Board.

PRACTICING WITHOUT LICENSE—CRIMINAL RESPONSIBILITY.

14. Statutory Provisions in General.
-

Cases are cited in this article to and including 193 Cal., 64 Cal. App. and 232 Pac.

§ 3. **Statutes Relating to Medicine, Surgery, Dentistry, Optometry, etc.**—At an early date in the history of California it became evident to the law-givers that the treatment of diseases and disorders must be made the subject of regulation. Beginning with enactments of an elemental character, the legislation in this respect has been added to and amplified, until at the present time there exists upon the statute books a body of laws which covers the practice of medicine and surgery in all of its departments. In addition to the enactments which relate to those who practice in the general field of medicine and surgery,¹⁴ there are laws which regulate the practice of dentistry,¹⁵ optometry,¹⁶ osteopathy¹⁷ and chiropractic.¹⁸

The practice of veterinary medicine has also been made the subject of statutory regulation,¹⁹ and there are numerous laws which bear more or less directly upon the art of healing or curing and its practice. The legislature, by an act taking effect in 1919, has forbidden the advertising of remedies for venereal diseases and related disorders.²⁰ Section 346 of the Penal Code declares that a physician who endangers the life of another while intoxicated shall be guilty of a misdemeanor. The Political Code contains provisions relating to the acquisition and use of dead bodies for purposes of dissection.¹ And the investigator is reminded of the statutory provisions relating to the registration of births and deaths.²

14. Stats. 1913, p. 722; Stats. 1915, p. 184; Stats. 1915, p. 1431; Stats. 1917, p. 93; Stats. 1919, p. 1296; Stats. 1919, p. 1299; Stats. 1921, p. 995; Stats. 1921, p. 1009; Stats. 1921, p. 1051; Stats. 1921, p. 1317; Stats. 1923, p. 618; Stats. 1923, p. 716.

15. Stats. 1915, p. 698.

16. Stats. 1913, p. 1097; Stats. 1923, p. 380.

As to whether optometry is within statutes relating to the practice

of medicine, see note, 22 A. L. R. 1173.

17. Stats. 1923, p. xciii.

18. Stats. 1923, p. lxxxviii.

19. Stats. 1907, p. 919.

20. Stats. 1919, p. 477.

1. Pol. Code, § 3093 et seq. See DEAD BODIES, vol. 8, p. 919.

2. Stats. 1915, p. 575; Stats. 1917, p. 717; Stats. 1919, p. 445; Stats. 1919, p. 758; Stats. 1921, p. 824; Stats. 1921, p. 892.

§ 4. **Validity of Statutes in General.**—There is, it seems, no ground for a contention that constitutional limitations restrict the power of the legislature to regulate the practice of the art of curing diseases and disorders.³ Even optometry or the fitting of eye-glasses has been held to be subject to regulation by the legislature.⁴ In respect of its form, the Medical Practice Act has been held not to be open to objection on the score that its title is not sufficiently expressive of its contents,⁵ and that the title is not sufficiently comprehensive to include the matters contained in the section relating to the licensing of physicians and surgeons.⁶ A like contention was held to be untenable in respect of the Dental Practice Act of 1885.⁷ The Osteopathic Practice Act—an initiative measure which was adopted by the people at the general election held in 1922⁸—has been sustained against objections in respect of its administrative features.⁹

§ 5. **Criminal Responsibility.**—That the consequences of the practitioner's acts or treatment may be the foundation of a criminal prosecution admits of no doubt,—the principal controversy as to his responsibility having relation to the mental element which is inherent in every crime. The fact that a patient has died is, of course, no basis for a charge of felonious homicide; but if it is made to appear that the physician or surgeon acted or failed to act

As to the validity of such regulations, see CONSTITUTIONAL LAW, vol. 5, p. 702. As to who is a physician within the contemplation of statutes relating to vital statistics, see note, 8 A. L. R. 1070.

3. See CONSTITUTIONAL LAW, vol. 5, pp. 705, 735, 846.

4. In re Rust, 181 Cal. 73, 183 Pac. 548; McNaughton v. Johnson, 242 U. S. 344, Ann. Cas. 1917B, 801, 61 L. Ed. 352, 37 Sup. Ct. Rep. 138, affirming 233 Fed. 334.

5. People v. Jordan, 172 Cal. 391,

156 Pac. 451; People v. Chong, 28 Cal. App. 121, 151 Pac. 553; People v. Ah Fong, 25 Cal. App. 724, 145 Pac. 153; Ex parte Chow Juyan, 235 Fed. 1014.

6. People v. Wah Hing, 47 Cal. App. 327, 190 Pac. 662.

7. Matter of Application of Victor, 27 Cal. App. 73, 148 Pac. 975.

8. Stats. 1923, p. xciii.

9. Board of Osteopathic Examiners v. Biley, 192 Cal. 158, 218 Pac. 1018.

with a certain degree of knowledge—ordinarily described as “gross ignorance” or “gross negligence”—as to the consequences of his conduct, he may be held to be criminally responsible.¹⁰ The crime of producing or facilitating a miscarriage or abortion is considered in another article.¹¹

II. LICENSING REGULATIONS.

Generally.

§ 6. **Nature, Scope and Operation.**—The most prominent feature of the statutes relating to the practice of medicine and surgery is the requirement that practitioners be licensed.¹² This provision applies to all practitioners—those who have been engaged in practice as well as those who commence practice subsequently to the enactment of the statute¹³—unless the act contains an exemption clause.¹⁴ The statutes have confided the issuance of licenses to state boards, conferring upon them extensive powers in respect of the qualifications of persons who may apply for the requisite certificate, as well as the standing of technical schools and the value of their diplomas.¹⁵ If a state board unjustly refuses to issue a certificate to one who applies therefor, the applicant may maintain an action against the board to compel its issuance.¹⁶ Again, if the board of medical examiners for

10. See note, 2 California Law Review, 329.

11. See ABORTION, vol. 1, p. 99.

12. As to licenses of businesses and occupations generally, see LICENSES, vol. 16, p. 206.

13. Ex parte Hornef, 154 Cal. 355, 97 Pac. 891; People v. Keseling, 35 Cal. App. 501, 170 Pac. 627.

14. Ex parte Hornef, 154 Cal. 355, 97 Pac. 891 (interpreting the Dental Practice Act of 1885); Mat-

ter of Application of Victor, 27 Cal. App. 73, 148 Pac. 975 (construing the Dental Practice Act of 1885, as amended by the Act of 1909, Stats. 1909, p. 800).

15. See infra, § 8 et seq.

16. See Bohannon v. Board of Medical Examiners, 24 Cal. App. 216, 140 Pac. 1089, in respect of the right of one who has practiced a “special branch of medicine and surgery” within the meaning of the

insufficient reasons refuses to recognize and approve a particular school, the institution, pursuant to the statute of 1919,¹⁷ may institute an action for redress. In such a proceeding evidence is competent for the purpose of proving the course of instruction given by the plaintiff to its students, and any defects in equipment and methods of instruction.¹⁸

The initiative act relating to the practice of chiropractic¹⁹ is to be construed with a view to the existing laws, and hence to contemplate a state board of chiropractic examiners who have held a practitioner's license under the Medical Practice Act.²⁰

§ 7. Authority Conferred by Licenses.—The various departments of the art of relieving or curing diseases and disorders have been made the subject of separate legislative enactments,—as noted above;¹ and a license which purports to entitle the holder to practice the curative art in one of its departments does not authorize him to perform acts which relate to another.² Accordingly, it is held that a license to practice osteopathy does not entitle the osteopath to practice optometry without a license from the state board of optometry.³ Nor is one who has been licensed to practice osteopathy entitled to embark

Act of 1907 (Stats. 1907, p. 252), as amended by subsequent enactments. And see generally CONSTITUTIONAL LAW, vol. 5, p. 681.

But see the statement to the effect that the board's decision is conclusive, appearing in *Van Vleck v. Dental Examiners*, 5 Cal. Unrep. 640, 48 Pac. 223,—which case has been said to be without the force of a judicial precedent. *Ex parte Whitley*, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879.

17. Stats. 1919, p. 1299.

18. College of Osteopathic Physi-

cians and Surgeons v. Board of Medical Examiners, 53 Cal. App. 138, 199 Pac. 1093.

19. Stats. 1923, p. lxxxviii.

20. *People v. La Barre*, 193 Cal. 388, 224 Pac. 750.

1. See *supra*, § 3.

2. As to whether optometry is within statutes relating to the practice of medicine, see note, 32 A. L. R. 1173.

3. *In re Rust*, 181 Cal. 73, 183 Pac. 548; *In re Rust*, 35 Cal. App. 422, 169 Pac. 1050.

upon an unlimited practice of medicine and surgery.⁴ The same is true of a person who holds a certificate authorizing him to practice naturopathy.⁵ And while one who has been licensed to practice naturopathy has been held to be entitled to practice optometry by virtue of the provisions of the Optometry Law which secure to licensed physicians and surgeons the right to fit glasses to the human eye,⁶ the later cases have expressed disapproval of this decision.⁷

§ 8. Validity of Regulations in General.—The validity of the various licensing regulations has been attacked upon numerous grounds,—without success; and it seems fair to conclude that this requirement of the statutes is not open to any of the familiar constitutional objections.⁸ The purpose of the requirement that a license must be procured is to protect both the patient and the public from the dangers and evils which may result from treatment by those who do not possess knowledge of the art or science in question;⁹ and the courts have been ready to concede that the legislature has power to determine the necessity for knowledge and experience on the part of

4. *Harlan v. Alderson*, 55 Cal. App. 263, 203 Pac. 1014.

5. *Millsap v. Alderson*, 63 Cal. App. 518, 219 Pac. 469.

6. *In re Gerber*, 57 Cal. App. 141, 206 Pac. 1004.

7. *Hall v. Steele*, 193 Cal. 602, 226 Pac. 854; *Millsap v. Alderson*, 63 Cal. App. 518, 219 Pac. 469.

8. *People v. Ratledge*, 172 Cal. 401, 156 Pac. 455; *People v. Jordan*, 172 Cal. 391, 156 Pac. 451; *Ex parte Hornef*, 154 Cal. 355, 97 Pac. 891; *Ex parte Whitley*, 144 Cal. 167, 77 Pac. 879, 1 Ann. Cas. 13; *Ex parte Gerino*, 143 Cal. 412, 66 L. R. A. 249, 77 Pac. 266; *Ex parte McNulty*, 77 Cal. 164, 11 Am. Rep. 257, 19 Pac. 237; *Ex*

parte Johnson, 62 Cal. 263; *People v. Wah Hing*, 47 Cal. App. 327, 190 Pac. 662; *People v. Keseling*, 35 Cal. App. 505, 170 Pac. 627; *McNaughton v. Johnson*, 242 U. S. 344, Ann. Cas. 1917B, 801, 61 L. Ed. 352, 37 Sup. Ct. Rep. 178, affirming 233 Fed. 334; *Crane v. Johnson*, 242 U. S. 339, Ann. Cas. 1917B, 796, 61 L. Ed. 348, 37 Sup. Ct. Rep. 176, affirming 233 Fed. 334; *Ex parte Chow Juyan*, 235 Fed. 1014. See *supra*, § 4; *infra*, §§ 10, 14.

9. *People v. Jordan*, 172 Cal. 395, 156 Pac. 451; *Ex parte Whitley*, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879.

practitioners, and also the nature and extent of such knowledge.¹⁰ Such being the purpose of licensing requirements, it is evident that the statute is not discriminatory in that it exempts from its provisions those persons who rely upon prayer as a means of effecting a cure of bodily ills,—the efficacy of prayer not being dependent upon the knowledge and skill of the practitioner.¹¹ Nor is the statute discriminatory because it forbids the diagnosis of disease by one who has not procured a license,¹² because it exempts “drugless” practitioners,¹³ or because of an exemption in favor of those who actually have been engaged in practice previously to its enactment.¹⁴ An exemption in favor of those who are licensed generally to practice medicine and surgery is no objection to a statute which imposes a license requirement upon persons who engage in practice in a limited field,—as optometry.¹⁵ Again, it is established that the legislature has power to define the acts which are forbidden to be done without the prescribed license.¹⁶

Cities, for the purpose of raising revenue, are empowered to impose a license tax on physicians and surgeons. It has been so held in respect of a city of the sixth class.¹⁷

10. *Ex parte Whitley*, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879; *People v. Keseling*, 35 Cal. App. 501, 170 Pac. 627; *Bohannon v. Board of Medical Examiners*, 24 Cal. App. 215, 140 Pac. 1089.

11. *People v. Jordan*, 172 Cal. 395, 156 Pac. 451; *Ex parte Bohannon*, 14 Cal. App. 321, 111 Pac. 1039; *Crane v. Johnson*, 242 U. S. 339, Ann. Cas. 1917B, 796, 61 L. Ed. 348, 37 Sup. Ct. Rep. 176, affirming 233 Fed. 334. As to discrimination against particular school or method as affecting validity of statutes, see note, 16 A. L. R. 709.

12. *People v. Jordan*, 172 Cal. 391, 156 Pac. 451.

13. *People v. Jordan*, 172 Cal. 391, 156 Pac. 451; *Ex parte Chow Juyan*, 235 Fed. 1014.

14. *Ex parte Whitley*, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879; *Bohannon v. Board of Medical Examiners*, 24 Cal. App. 215, 140 Pac. 1089.

15. *McNaughton v. Johnson*, 242 U. S. 344, Ann. Cas. 1917B, 801, 61 L. Ed. 352, 37 Sup. Ct. Rep. 178, affirming 233 Fed. 334.

16. *People v. Keseling*, 35 Cal. App. 501, 170 Pac. 627; *People v. Fortch*, 13 Cal. App. 770, 110 Pac. 823.

17. *City of Redding v. Dozier*, 56 Cal. App. 590, 206 Pac. 465.

§ 9. Requirements as to Knowledge and Experience.—

In respect of the curriculum prescribed, the statute is not open to objection on the score that the technical knowledge required of applicants for licenses is not essential to the practice of the art of curing in all of its departments,—including such methods as chiropractic¹⁸ or optometry.¹⁹ Nor is it arbitrary or unjust to require applicants to produce diplomas of technical schools.²⁰ Again, it is established that the legislature may create boards for the purpose of administering licensing regulations,¹ and may empower such a board to determine the standing of technical schools and the value of their diplomas.²

Suspension and Revocation of Licenses.

§ 10. **Statutory Provisions Generally.**—Unprofessional conduct on the part of a licensed practitioner is punished by a suspension or revocation of his license.³ While the judicial power of the state is vested in the courts, it is well established that the constitution does not forbid the legislature to confer upon a board—such as the board of medical examiners—the function of revoking licenses which it previously has granted.⁴ The action of the board

See generally as to licenses for revenue, LICENSES, vol. 16, p. 183.

18. *People v. Ratledge*, 172 Cal. 401, 156 Pac. 455.

19. *McNaughton v. Johnson*, 242 U. S. 344, Ann. Cas. 1917B, 801, 61 L. Ed. 352, 37 Sup. Ct. Rep. 178, affirming 233 Fed. 334.

20. *Ex parte Gerino*, 143 Cal. 412, 66 L. R. A. 249, 77 Pac. 266; *Arwine v. Board of Medical Examiners*, 151 Cal. 499, 91 Pac. 319.

1. *Ex parte Gerino*, 143 Cal. 412, 66 L. R. A. 249, 77 Pac. 166; *Ex parte Frazer*, 54 Cal. 94; *Ex parte*

Chow Juyan, 235 Fed. 1014. And see CONSTITUTIONAL LAW, vol. 5, p. 681.

2. *Arwine v. Board of Medical Examiners*, 151 Cal. 499, 91 Pac. 319; *Ex parte Whitley*, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879; *People v. Chong*, 28 Cal. App. 121, 151 Pac. 553.

3. As to the revocation of licenses generally, see LICENSES, vol. 16, p. 259. As to the right of the state to revoke a physician's license, see note, 3 Cal. Law Rev. 55.

4. *Suckow v. Alderson*, 182 Cal. 247, 187 Pac. 965; *Hewitt v. Board*